

**In the**

**SUPREME COURT OF MISSOURI**

**En Banc**

**May Session, 2010**

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**Report of the Office of the Chief Disciplinary Counsel for the year  
2009 together with the Financial Report of the Treasurer of the  
Advisory Committee Fund for 2009**

**ALAN D. PRATZEL  
Chief Disciplinary Counsel**

IN THE  
SUPREME COURT OF MISSOURI  
EN BANC

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MAY SESSION, 2010

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REPORT OF THE OFFICE OF CHIEF DISCIPLINARY COUNSEL FOR THE YEAR  
2009 TOGETHER WITH THE FINANCIAL REPORT OF THE TREASURER OF THE  
ADVISORY COMMITTEE FUND FOR 2009

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To the Honorable Judges of The Supreme Court:

Comes now the Office of Chief Disciplinary Counsel, and respectfully reports to the Court on matters concluded during calendar year 2009 or pending on December 31, 2009.

**I.**

**THE FOLLOWING DISCIPLINARY ACTIONS WERE TAKEN BY  
THE COURT DURING 2009 BASED ON PROCEEDINGS  
PROSECUTED BY THE OFFICE OF  
CHIEF DISCIPLINARY COUNSEL<sup>1</sup>**

**ALLAN, JOHN J., St. Louis, MO, Missouri Bar #24080**

Suspension, suspension stayed, placed on probation for one year: Violation of Rules 4-1.3 and 4-1.4. Date of Order: November 23, 2009.

**BARRY, JAMES P., Muscatine, IA, Missouri Bar #34142**

Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of one year: Rule 5.20 (Reciprocal – Iowa); Violation of Rules 4-8.4(b) and 4-8.4(d). Date of Order: March 31, 2009.

**BELL, ALLAN H., North Kansas City, MO, Missouri Bar #19459**

Public Reprimand: Violation of Rule 4-1.5(a). Date of Order: June 30, 2009.

**BLUM, MICHAEL WAYNE, Columbia, MO, Missouri Bar #47278**

Suspension, suspension stayed, placed on probation for two years: Violation of Rules 4-1.3, 4-1.4, 4-1.8(e), 4-1.15(c), 4-1.16, and 4-8.1(c). Date of Order: September 1, 2009.

**BROWN, MARK STEVEN, Clayton, MO, Missouri Bar #45977**

Surrendered license and disbarred. Date of Order: September 28, 2009.  
Supreme Court No. SC90387

Pending Rule 5.21(a) interim suspension case dismissed as moot on September 28, 2009. Supreme Court No. SC90386

**BUERKLE, JOE T., Cape Girardeau, MO, Missouri Bar #20305**

Surrendered license and disbarred: Violation of Rule 4-8.4(c). Date of Order: August 14, 2009.

**CARTER JR., FRANK N., St. Louis, MO, Missouri Bar #20099**

Surrendered license and disbarred: Violation of Rules 4-1.5(c), 4-1.15(f), and 4-8.4(c). Date of Order: January 9, 2009.

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<sup>1</sup> Often there are attorneys with the same or similar names. It is important to note the bar number and location of the individual.

**COLEMAN, LARRY DELANO, Kansas City, MO, Missouri Bar #27575**

Suspension, suspension stayed, placed on probation for one year: Violation of Rules 4-1.2, 4-1.7, 4-1.15, 4-1.16, and 4-8.4. Date of Order: November 20, 2009.

**COON JR., EUGENE EDWARD, St. Louis, MO, Missouri Bar #27249**

Default Disbarment: Violation of Rules 4-8.1(c) and 4-8.4(d). Date of Order: September 15, 2009.

**CROW, CHERIE NELSON, Overland Park, KS, Missouri Bar #50695**

Default Disbarment: Violation of Rule 4-8.1(c). Date of Order: April 28, 2009.

**DAY, NEYSA L., Kansas City, MO, Missouri Bar #34729**

Interim suspension from the practice of law pursuant to provisions of Rule 5.24. Date of order: June 22, 2009. Supreme Court No. SC90187

Disbarment: Violation of Rules 4-1.1, 4-1.6, 4-1.7, 4-1.9, 4-1.15, 4-3.1, 4-3.2, 4-5.5, 4-8.1, and 4-8.4(d). Date of Order: November 9, 2009. Supreme Court No. SC90052

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.15(c)(f), 4-1.16(d), 4-8.1(c), and 4-8.4(c)(d). Date of Order: November 9, 2009. Supreme Court No. SC90429

**DENNIS (N/K/A SCHOENEBERG), REBECCA R., Glendale, MO,  
Missouri Bar #34853**

Public Reprimand: Violation of Rules 4-8.4(c)(d) and (e). Date of Order: July 22, 2009.

**DESSELLE, HARLEY KENT, Lee's Summit, MO, Missouri Bar #23819**

Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.5, 4-1.8, 4-1.15, 4-3.2, 4-8.1, and 4-8.4. Date of Order: April 17, 2009.

**DICKHAUS, KARL WALTER, St. Louis, MO, Missouri Bar #47951**

Default Disbarment: Violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.5, 4-1.16, 4-8.1(c), and 4-8.4(c)(d). Date of Order: March 11, 2009.

**DOWELL, DOUGLAS WAYNE, Lee's Summit, MO, Missouri Bar #54678**

Suspended from the practice of law and no application for reinstatement shall be entertained by the Court for a period of three years: Rule 5.20 (Reciprocal – Kansas); Violation of Rules 4-1.1, 4-1.3, 4-1.4(a), 4-1.15, 4-4.1(a), and 4-8.1(c). Date of Order: February 11, 2009.

**FOSTER, JANELL ROSE, Wichita, KS, Missouri Bar #30268**

Surrendered license and disbarred: Violation of Rules 4-1.15 and 4-8.4(c). Date of Order: June 4, 2009.

**FRAHM, CHARLES THEODORE, Lenexa, KS, (now Parkville, MO)  
Missouri Bar #34859**

Suspension, suspension stayed, placed on probation for six months: Rule 5.21(Criminal Conviction); Date of Order: March 31, 2009.

**GAGE II, JOHN B., Overland Park, KS, Missouri Bar #30103**

Interim suspension from the practice of law pursuant to provisions of Rule 5.23(a). Date of Order: February 11, 2009.

**GENOVA, LESLIE ANN, Lee's Summit, MO, Missouri Bar #43041**

Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: March 25, 2009.

**GIBERT, KENNETH H., St. Louis, MO, Missouri Bar #42353**

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.5, 4-1.16(d), and 4-8.1. Date of Order: June 22, 2009.

**GRAY, CHARLES WILLIAM, St. Charles, MO, Missouri Bar #51535**

Public Reprimand: Violation of Rules 4-8.2(a) and 4-8.4(d). Date of Order: February 10, 2009.

**HARRIS, SHERRI LYNN, Branson, MO, Missouri Bar #56104**

Suspension, suspension stayed, placed on probation for one year: Violation of Rules 4-1.3 and 4-1.4. Date of Order: December 4, 2009.

**HARVATH, GERALD J., Pacific, MO, Missouri Bar #23032**

Suspension, suspension stayed, placed on probation for one year: Violation of Rules 4-1.3, 4-1.4, and 4-1.5. Date of Order: November 12, 2009.

**HENRY, SUSAN L., Macon, MO, Missouri Bar #43044**

Suspension, suspension stayed, placed on probation for six months: Violation of Rules 4-1.3, 4-1.4(a), and 4-8.4(d). Date of Order: February 13, 2009.

**JARMAN, LINDA FAYE, Ferguson, MO, Missouri Bar #39927**

Suspension, suspension stayed, placed on probation for two years: Violation of Rules 4-1.1, 4-1.3, 4-1.4, and 4-1.9(a). Date of Order: November 17, 2009.

**KALUDIS, STEPHEN G., Potomac, MD, Missouri Bar #38026**

Disbarment: Rule 5.21 (Criminal Conviction); Violation of Rule 4-8.4(b). Date of Order: March 20, 2009.

**LAWSON, MICHAEL SCOTT, Lee's Summit, MO, Missouri Bar #47711**

Default Disbarment: Violation of Rules 4-5.5 and 4-8.4(d). Date of Order: February 4, 2009.

**MADISON, JAMES TRACY, Kansas City, MO, Missouri Bar #48405**

Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of six months: Violation of Rules 4-3.5(d), 4-8.2(a), and 4-8.4(d). Date of Order: May 22, 2009.

**O'SULLIVAN, WILLIAM F., Kansas City, MO, Missouri Bar #23384**

Motion for final order of discipline pursuant to Rule 5.21 overruled. Chief Disciplinary Counsel to proceed to seek discipline before a disciplinary hearing panel as in other cases. Date of Order: January 27, 2009. Supreme Court No. SC89815

Suspension, suspension stayed, placed on probation for one year: Violation of Rule 4-8.4(b). Date of Order: June 29, 2009. Supreme Court No. SC90235

**PENNOYER, JAMES ESTEN, Farmington, MO, Missouri Bar #26688**

Default Disbarment: Violation – in default pursuant to Rule 5.13. Date of Order: October 23, 2009.

Order of default disbarment set aside on Respondent's motion. Date of Order: December 22, 2009. Supreme Court No. SC90467

Interim suspension from the practice of law pursuant to provisions of Rule 5.23(c). Date of Order: December 22, 2009. Supreme Court No. SC90575

**SHAUGHNESSY, RYAN S., St. Louis, MO, Missouri Bar #39922**

Suspension, suspension stayed, placed on probation for one year: Violation of Rule 4-8.1(c). Date of Order: June 19, 2009.

**SMITH, GARY W., Sedalia, MO, Missouri Bar #30507**

Public Reprimand: Violation of Rules 4-1.3 and 4-1.4. Date of Order: June 16, 2009.

**STARK, GARY E., Anna, IL, Missouri Bar #52543**

Default Disbarment: Violation – in default pursuant to Rule 5.13. Date of Order: December 10, 2008.

Respondent's motion to vacate or set aside order of default disbarment sustained. Order of disbarment issued on December 10, 2008, vacated. Respondent granted thirty days to file an answer with the Chair of the Advisory Committee. Date of Order: February 11, 2009. Supreme Court No. SC89801

Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of one year: Violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.15, 4-8.1(c), 4-8.4(a)(c)(d) and 15.05. Date of Order: October 6, 2009. Supreme Court No. SC90358

**VINCENT, SCOTT E., Kansas City, MO, Missouri Bar #42311**

Suspension, suspension stayed, placed on probation for twelve months: Violation of Rules 4-1.4, 4-1.9, 4-1.16(d), and 4-8.4(d). Date of Order: March 31, 2009.

**WHITFIELD, ANTHONY K., St. Louis, MO, Missouri Bar #48447**

Suspension, suspension stayed, placed on probation for one year: Violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.15, 4-5.5(c), and 4-8.4(c). Date of Order: April 21, 2009.

**WYNNE, GEORGE, St. Charles, MO, Missouri Bar #25084**

Default Disbarment: Violation of Rules 4-1.1, 4-1.3, 4-1.4(a)(b), and 4-8.1(c). Date of Order: July 23, 2009.

**YOUNG, MARY ELLEN, Holden, MO, Missouri Bar #36717**

Default Disbarment: Violation – in default pursuant to Rule 5.13. Date of Order: May 20, 2009.

Respondent's motion to set aside default disbarment order sustained. Respondent granted until July 1, 2009, to file an answer with the Chair of the Advisory Committee. Date of Order: June 1, 2009.

**ZINK, BRIAN, St. Charles, MO, Missouri Bar #44563**

Suspended from the practice of law and no petition for reinstatement will be entertained by the Court for a period of six months: Violation of Rules 4-1.4(a), 4-4.1, 4-8.4(c) and 4-8.4(e). Date of Order: March 31, 2009.

**II.**

**THE FOLLOWING DISCIPLINARY ACTIONS WERE PENDING  
BEFORE THE COURT AT THE CLOSE OF 2009 BASED ON PROCEEDINGS  
PROSECUTED BY THE OFFICE OF  
CHIEF DISCIPLINARY COUNSEL**

**DILL, SUSAN, Kansas City, MO, Missouri Bar #33279**

(Public Reprimand: Violation of Rules 4-1.15(a)(c) and (d). Date of Order: January 4, 2010.)

**FLUHR, AURORA M., St. Louis, MO, Missouri Bar #52490**

(Suspended from the practice of law and no application for reinstatement shall be entertained by the Court for a period of six months: Violation of Rules 4-1.1, 4-1.3, 4-1.4, and 4-1.16. Date of Order: March 2, 2010.)

**MOORE, MATTHEW J., Lithia, FL, Missouri Bar #44939**

Pending.

**WISEMAN, LE ANNE, Columbia, MO, Missouri Bar #49382**

(Surrendered license and suspended until further order of the Court: due to mental incapacity to practice law. Date of Order: January 13, 2010.)

### **III. REINSTATEMENT PROCEEDINGS**

#### **A. DISCIPLINARY MATTERS**

At the beginning of the year, 4 Missouri lawyers who had previously been disciplined had applications for reinstatement pending for processing by the Chief Disciplinary Counsel. During the year 13 additional applications for reinstatement were filed and referred to the Chief Disciplinary Counsel for processing. The OCDC processed a total of 17 disciplinary reinstatement applications during 2009.

The status of those 17 applications is as follows:

Reinstated	<b>6</b>
Denied	<b>1</b>
Dismissed	<b>1</b>
Pending with OCDC	<b>9</b>

#### **Six Disciplined Petitioners Were Reinstated By The Supreme Court**

1. Marc W. Braun, St. Louis, MO, Missouri Bar #33511, reinstated on August 25, 2009, and placed on probation for a period of three years. Petitioner was suspended on November 14, 2005.
2. James L. Daniels, Kansas City, MO, Missouri Bar #49263, reinstated on August 20, 2009, and placed on probation for a period of one year. Petitioner was suspended on September 5, 2007.
3. Jillana Michel-Setzer, Little Elm, TX, Missouri Bar #54041, reinstated on December 1, 2009. Petitioner was suspended on July 19, 2007.
4. Warren Steven Rives, Lake Ozark, MO, Missouri Bar #41425, reinstated on May 7, 2009. Petitioner was suspended on September 30, 2008.
5. William E. Roussin, St. Louis, MO, Missouri Bar #24258, reinstated on April 22, 2009. Petitioner was disbarred on June 29, 1993.
6. Brian Zink, St. Charles, MO, Missouri Bar #44563, reinstated on October 1, 2009. Petitioner was suspended on March 31, 2009.

**One Disciplined Petitioner Was Denied Reinstatement  
By The Supreme Court**

1. Thomas M. Utterback, Missouri Bar #23288, denied reinstatement following briefing and argument before the Missouri Supreme Court. Petitioner was disbarred on June 30, 1998.

**One Petition Was Dismissed By The Supreme Court**

1. John W. Zimmerman, Missouri Bar #31720, cause dismissed on November 17, 2009. Petitioner was disbarred on June 30, 1994.

**B. NON-DISCIPLINARY REINSTATEMENTS**

Lawyers may be automatically suspended under Rule 6.01(f) upon non-payment of annual enrollment fees. If their non-payment exceeds three years, they must apply for reinstatement under Rule 5.28. In 2009, the OCDC investigated and processed 10 applications for reinstatement by those lawyers. Eight were reinstated. One application was dismissed by order of the Court, and one application remained pending at the end of 2009.

Lawyers may elect to become inactive under Rule 6.03. Per Rule 6.06, the OCDC investigated and processed 31 inactive lawyers' applications for reinstatement. Twenty-eight were returned to active status. One application was dismissed by order of the Court, and two applications remained pending at the end of 2009.

Lawyers may be automatically suspended for state tax issues under Rule 5.245. During 2009, the OCDC investigated and processed 30 tax suspension applications for reinstatement. Twenty-nine were reinstated. One application remained pending at the end of 2009.

## IV. COMPLAINTS RECEIVED AND ACTED UPON IN 2009

**2,224** complaints of attorney misconduct were received in 2009.

During 2009, the following actions were taken on complaints received:

- 703** Formal Investigations opened
  - 468** Cases investigated by Regional Disciplinary Committees
  - 235** Cases investigated by OCDC
- 94** Cases placed in the OCDC's Informal Resolution Program
  - [\*See Paragraph A (below)]
- 1,090** Investigations not opened (*In certain instances, OCDC does not open an investigation until after related litigation is completed.*) Approximately 106 complaints were provided a further review and response by senior OCDC staff, following complainants' requests. Some of those reviews led to an investigation being opened.
- 146** Insufficient information to proceed
- 91** Referred to Fee Dispute Committees
- 58** Referred to Complaint Resolution Committee (\*See *Missouri Bar Complaint Resolution Activity Report attached.*)
- 41** Placed in "Inquiry" status (*These cases were not opened but were monitored to determine whether an investigation should be opened in the future.*)

### A. Informal Resolution Program

In this program, intake counsel assigns appropriate cases to a paralegal to contact the complainant, the respondent, or both, to assist in resolving the complaint rather than proceeding with a formal investigation. The program is used most often in response to complaints that the client has not had adequate communication from the lawyer or where the client has been unable to obtain file documents. It may also be used in a case where the complainant has trouble articulating the nature of the complaint, or seems confused about the lawyer's responsibilities or the legal process. The program has been successful in reducing complaint processing time while preserving the attorney/client relationship. Most cases in the program were resolved without opening an investigation.

## **B. Advisory Committee Review**

Rule 5.12 permits complainants to seek review by the Advisory Committee in cases in which the OCDC or a Regional Disciplinary Committee investigates and finds no probable cause that a violation occurred. In 2009, 83 complainants requested review. The Advisory Committee upheld the findings on 27 of these files but issued cautionary letters to 8 lawyers. The Committee assigned 17 of the review files for further investigation. Thirty-one of these review files were pending with the Committee at the end of the year.

## **C. Fee Disputes**

The Missouri Bar, Kansas City Metropolitan Bar Association and the Bar Association of Metropolitan St. Louis continued to provide fee dispute resolution programs. These programs are valuable to lawyers and legal consumers by providing a forum for fee-related complaints to be addressed through a non-disciplinary structure. During the year, 91 complainants were referred to Fee Dispute Committees.

## **V. DISCIPLINE ACTION INITIATED**

### **A. Admonitions**

The OCDC administered 46 written admonitions and the Regional Disciplinary Committees administered 48 written admonitions to Missouri lawyers. (Total: 94 admonitions). In addition, 98 cautionary letters were sent to lawyers by OCDC and the Regional Committees. Cautionary letters are not disciplinary action, but are used to educate the attorney on ethical responsibilities or to alert the attorney that a particular course of conduct, if unchecked in the future, may cause additional complaints to be filed.

### **B. Investigation Summary**

Region	Investigations Pending 1/1/09	Investigations Referred 2009	Investigations Disposed in 2009
IV	69	145	147
X	92	178	208
XI	42	78	84
XV	25	67	59
OCDC	100	329*	302*

\* Includes Informal Resolution

Region	Admonitions Issued in 2009	Cautionary Letters Issued in 2009
IV	18	14
X	12	22
XI	3	5
XV	15	11
OCDC	46	46

## **C. Filed Hearing Matters**

### **FILING INFORMATIONS**

In 2009, the OCDC and the Regional Disciplinary Committees filed 38 Informations (the formal charging document) on 71 files. “Files” indicate individual complaints against attorneys. An Information against one attorney may include charges involving multiple files.

Twenty Informations, representing 47 complaint files, were pending before the Advisory Committee and Disciplinary Hearing Panels at the beginning of 2009. Disciplinary Hearing Panels conducted 15 hearings involving 44 files. Default Informations were filed directly in the Supreme Court against 9 attorneys. Of these 9 defaults, two were later set aside on motion of the attorney.

## **D. Cases filed at the Supreme Court**

### **RULE 5.19**

Informant’s briefs were filed pursuant to Rule 5.19(d), in the Supreme Court in four cases in 2009. Of those four cases, two were heard because the Respondent did not concur in a DHP’s recommended sanction and two were heard because the Informant did not concur in a DHP’s recommended sanction. In addition, an Informant’s reply brief was filed in one case. Five disciplinary cases appeared on the Court’s oral argument calendar in 2009. The Court published three disciplinary opinions in 2009: *In re Zink*, 278 S.W.3d 166 (Mo. banc 2009); *In re Madison*, 282 S.W.3d 350 (Mo. banc 2009); *In re Coleman*, 295 S.W.3d 857 (Mo. banc 2009).

### **RULE 5.20**

One reciprocal discipline case, based on an adjudication of misconduct in another jurisdiction, was filed in 2009: *In re Barry*, SC90016.

### **RULE 5.21**

In 2009, an Information was filed under Rule 5.21(a) against one attorney who had pled guilty, had been found guilty, or pled nolo contendere to violations of criminal laws: *In re Brown*, SC90386. This case was dismissed as moot because that attorney surrendered his license under Rule 5.25.

Also in 2009, Informations were filed under Rule 5.21(c) against two attorneys whose criminal cases were finally disposed: *In re Genova*, SC90023 and *In re Kaludis*, SC89977.

### **RULE 5.23**

In 2009, an Information was filed under Rule 5.23(a) against one attorney, based on another jurisdiction's finding of mental incapacity to practice law: *In re Gage*, SC89946.

Also in 2009, an Information was filed under Rules 5.23(b) and 5.23(c) against one attorney, based on his claim during a disciplinary proceeding, that he was suffering from a mental disorder: *In re Pennoyer*, SC90575.

### **RULE 5.24**

One Information requesting interim suspension for substantial threat of irreparable harm was filed in 2009: *In re Day*, SC90187.

### **RULE 5.25**

In 2009, four attorneys applied to surrender their licenses under Rule 5.25: *In re Brown*, SC90387, *In re Buerkle*, SC90313, *In re Moore*, SC90519, and *In re Wiseman*, SC90518. The OCDC filed Reports and Recommendations in two of these cases.

## **VI. LAWYER MONITORING**

OCDC staff monitor lawyers' practice in four circumstances, all intended to improve the lawyers' likelihood of maintaining a successful practice and protecting the public. In 2009, the office monitored 18 lawyers in the disciplinary diversion program established by Rule 5.105. The diversion program was created to help first offenders who have engaged in relatively minor rule violations.

Twenty-eight lawyers were monitored in 2009 while on probation under Rule 5.225, the rule permitting probation for suspended lawyers whose conduct did not warrant disbarment. Also, the office was asked by the Missouri Supreme Court and Missouri Board of Law Examiners in 2009 to monitor the practice of 14 newly admitted lawyers. Finally in 2009, the office monitored the practice of 6 lawyers who have been reinstated subject to an order of probation.

## **VII. UNAUTHORIZED PRACTICE OF LAW**

The Office of Chief Disciplinary Counsel opened complaint files on approximately 48 individuals and organizations alleged to have engaged in the unlawful practice of law.

Some of these cases were referred to local prosecuting attorneys or to the Consumer Protection Division of the Missouri Attorney General's office. Others were resolved through communication with the company or individual.

Due to the workload and staff resources of OCDC, the office limited its efforts to conducting in-depth investigations only when there appeared to be widespread consumer fraud occurring. Where appropriate, the office conducted investigations of complaints, and the office referred the materials to law enforcement for criminal prosecution as OCDC is only authorized to seek a civil injunction against a party for engaging in the unauthorized practice of law.

## **VIII. PRESENTATIONS BY OCDC STAFF**

During 2009, OCDC staff gave 33 presentations at Continuing Legal Education (CLE) seminars. The OCDC staff gave presentations to the following organizations: Estate and Trust Institute; Legal Services of Southern Missouri; Missouri Paralegal Association; National Association of Legal Secretaries; St. Louis University; United States District Court; University of Missouri-Columbia; University of Missouri-Kansas City; Washington University; and William Woods University. The OCDC staff also spoke at the Missouri Bar's Solo and Small Firm Conference, several Missouri Bar

telephone CLEs and webinars, and many other CLE presentations, sponsored by the Missouri Bar and other organizations.

## **IX. SIGNIFICANT ACTIVITIES IN 2009**

### **Disciplinary Case Processing**

The OCDC previously established a timeline standard for pending investigation cases that seeks to complete 75% of investigations within six months and 90% within one year. Except for six month investigations during the first quarter, the OCDC and the disciplinary system met the timeline standards throughout 2009.

### **Policy regarding Frequent Complaint Recipients**

The OCDC devotes a significant amount of its resources to complaints against attorneys who are frequent complaint recipients (FCR attorneys). In an attempt to address this issue, the OCDC adopted a policy in 2007 intended to identify and meet with FCR attorneys in order to discuss and address law practice management issues and other issues affecting the FCR attorney that might be contributing to client complaints. In addition, the meetings are intended to inform the FCR attorney regarding the disciplinary process and the system of progressive discipline adhered to by the OCDC. During 2009, the Chief Disciplinary Counsel continued to meet with lawyers pursuant to the FCR policy.

### **Practice Management Course**

In 2007, with the approval of the Missouri Supreme Court, the OCDC began working with The Missouri Bar to develop a comprehensive program to address the issues raised by the lack of law practice management skills among a few members of the Bar whose clients have repeatedly complained. This cooperative effort resulted in the development of a Practice Management Course staffed by a distinguished faculty of lawyers from around the state. In 2009, the course was offered through a series of webinars as well as a full-day in-person session in Columbia, Missouri. Fifty-two (52) lawyers attended the course in 2009.

### **Scanning/Paperless Office Project**

In an effort to increase system efficiency and to reduce investigative expenses, the OCDC instituted a paperless system of complaint processing utilized by the OCDC and the Regional Disciplinary Committees in Kansas City, St. Louis and Springfield. Under the system, initiated in October 2008, complaints and other externally-received documents are scanned at the OCDC for processing by staff counsel. To the extent that

the investigative file is being processed by a regional disciplinary committee, the case files are transmitted in a secure, electronic format to the regions. In addition, files on which the Supreme Court Advisory Committee is conducting a requested review are now transmitted securely in an electronic format. In 2009, the OCDC continued to successfully implement and refine the paperless document management system.

## **Physical Facilities**

In early 2009, the OCDC completed a capital improvement project at the OCDC facility located at 3335 American Avenue, Jefferson City, Missouri. With regard to the building's long term viability, after careful consideration and with regard to the somewhat speculative nature of the projections, we believe that we will be able to remain in the existing OCDC facility without additional space during the next three years. It is likely, however, that we will be required to consider during the latter part of the current 5-year projection period whether the existing facility will be adequate after 2012.

## **Regional Disciplinary Committee Training**

The OCDC is an accredited MCLE provider. In 2009, we continued to host training sessions and MCLE presentations for the benefit of lawyer and non-lawyer volunteers and special representatives who participate in the disciplinary system at the Regional Disciplinary Committee level. The OCDC presented CLE presentations on current issues in the disciplinary system at luncheons honoring the Regional Disciplinary Committee members in Kansas City, St. Louis and Springfield.

## **Staff Training**

In 2009, the OCDC attorney staff participated in training by attending conferences offered by The Missouri Bar, the National Organization of Bar Counsel and the American Bar Association – Center for Professional Responsibility. Paralegals in the office attended and presented training through the Missouri Paralegal Association and the nationwide Organization of Bar Investigators, an affiliate of the National Organization of Bar Counsel.

## **Supreme Court Rule 4**

In 2009, the Missouri Supreme Court adopted an amendment to Rule 4-1.15 of the Rules of Professional Conduct that requires financial institutions holding lawyer trust accounts to notify the OCDC in cases where the trust account is overdrawn. The overdraft reporting rule became effective as of January 1, 2010. The OCDC spent significant time during 2009 establishing investigative processes and procedures to prepare for implementation of the new overdraft reporting rule.

During 2009, the OCDC provided informational assistance and comments to a Special Committee on Lawyer Advertising appointed by the Board of Governors of The Missouri Bar charged with studying and proposing amendments to that portion of the Rules of Professional Conduct addressing lawyer advertising (i.e., Rules 4-7.1 through 4-7.5). As a result of that effort, the Missouri Supreme Court approved amendments to the advertising rules and the comments thereto. The amendments went into effect on July 1, 2010.

### **Supreme Court Rule 5**

There were few changes in Rule 5 in 2009, and those were technical in nature rather than major substantive changes.

Effective July 1, 2009, the Supreme Court amended Rule 5.12 to reorganize the structure of the rule.

Effective September 10, 2009, the Supreme Court amended Rule 5.16 and 5.19 to provide that notice of findings after disciplinary hearings need only be sent by first class mail.

Effective November 16, 2009, the Supreme Court amended Rule 5.01 to provide for the appointment of a vice chair of the advisory committee and for the ethics counsel to take the minutes of all advisory committee meetings.

Effective December 22, 2009, the Supreme Court amended Rule 5.28(e)(3) to provide that a person pleading guilty or *nolo contendere* or having been found guilty of a felony, whether or not a sentence was imposed, could not apply for reinstatement until after the successful completion of confinement and any subsequent or alternative period of probation or parole. Previously, Rule 5.28(e)(3) required an additional five year period after successful completion before a person could apply for reinstatement.

Effective February 8, 2010, the Court adopted Rule 5.285 and revisions to Rule 5.28 establishing procedures for consideration of lawyers' mental disorders during disciplinary and reinstatement cases. To address these issues, the OCDC actively participated with the Supreme Court Chronic Disability Task Force's efforts during 2009.

### **Website**

During 2008 and 2009, the OCDC revamped its website to provide complaint forms, better descriptions of the disciplinary process, and more links to related resources. The OCDC website is [www.mochiefcounsel.org](http://www.mochiefcounsel.org).

## **SUMMARY OF DISCIPLINE ACTIONS**

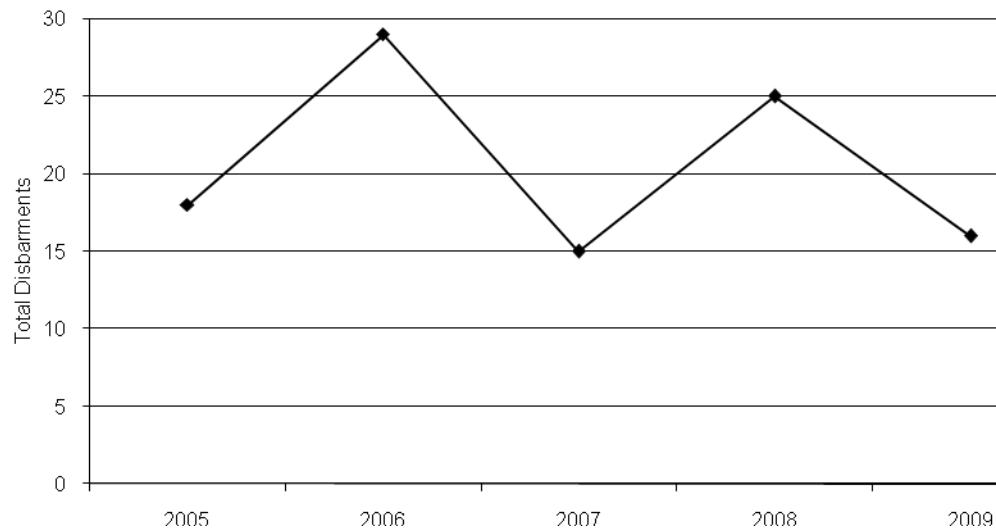
During 2009:

- **16** Sixteen lawyers were disbarred;
- **20** Twenty lawyers were suspended; **twelve** of those suspensions were stayed and attorneys placed on probation with conditions;
- **4** Four lawyers received public reprimands;
- **94** Ninety-four written admonitions were administered by the Regional Disciplinary Committees and the OCDC; and
- **2** Two additional matters were dismissed by the Court.

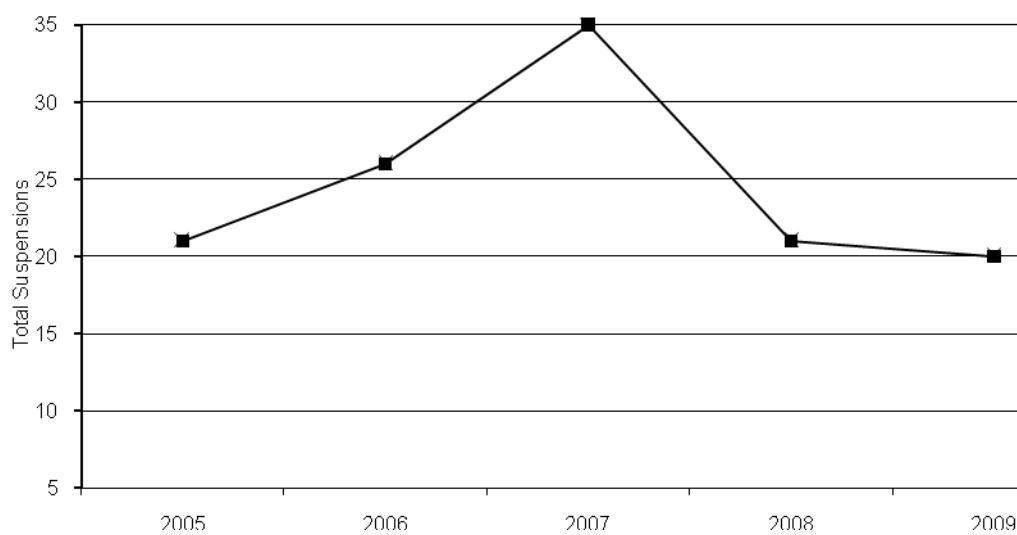
These figures include proceedings initiated by Regional Committees and the OCDC.

On occasion, other pending complaints against a lawyer are dismissed upon that lawyer's disbarment or suspension.

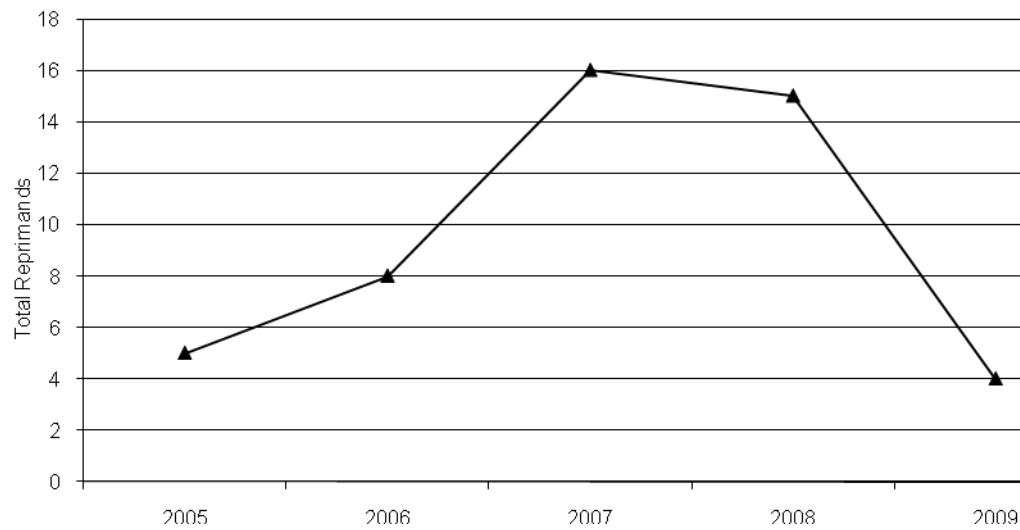
### Disbarments



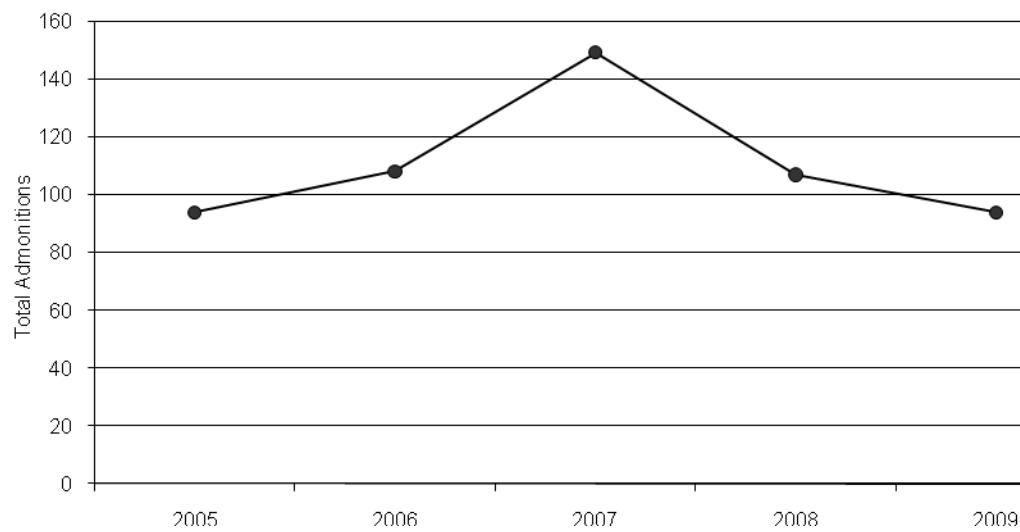
### Suspensions



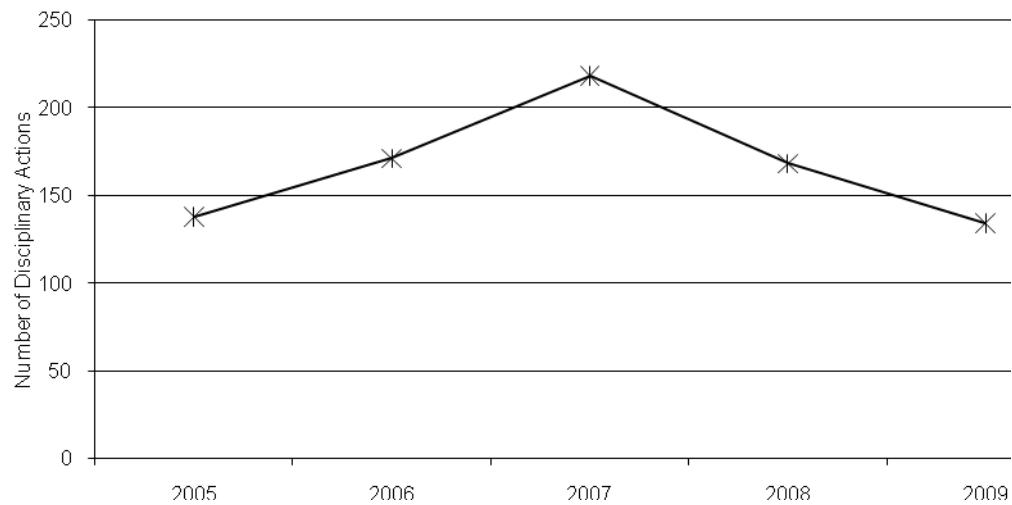
### Reprimands



### Admonitions



### Total Disciplinary Actions



***In 2009, there were a total of (134) disciplinary actions including admonitions and formal discipline matters.***

The total number of complaints opened as formal investigations during 2009 was 703. The most common complaint areas are as follows:

<b>NATURE OF VIOLATIONS *</b>	<b>NO.</b>
Rule 4-1.4 (Communication)	397
Rule 4-1.3 (Diligence)	362
Rule 4-1.15 (Safekeeping Property)	79
Rule 4-1.5 (Excessive Fees)	69
Rule 4-8.4(c) (Dishonesty, Fraud, Deceit, Misrepresentation)	59
Rule 4-1.16 (Improper Withdrawal)	55
Rule 4-7.2 (Advertising)	43
Rule 4-1.7 (Conflicts)	42
Rule 4-5.5 (Unauthorized Practice)	22
Rule 4-1.1 (Competence)	15
Rule 4-5.3(b) (Supervisory Responsibility)	10
Rule 4-4.1 (Truth to 3 <sup>rd</sup> Persons)	9
Rule 4-8.4(b) (Criminal Activity)	7
Rule 4-1.6 (Confidentiality)	7
Rule 4-3.3 (Truth to Tribunal)	5
Rule 4-3.8 (Prosecutorial Responsibility)	3
Rule 4-3.5(b) (Ex Parte Contacts)	2
Rule 4-3.4 (Obstruction/False Evidence)	2

\* Many complaints included more than one allegation.

The most prevalent practice areas which resulted in investigations are as follows:

<b>AREA OF PRACTICE *</b>	<b>NO.</b>
Domestic	162
Torts	112
Criminal	95
Estate/Probate	52
Other	51
Bankruptcy/Receivership	26
Real Property	25
Contracts	22
Workers Compensation	21
Traffic	21
Administrative/Governmental	19
Collections	12
Labor Law	8
Immigration/Naturalization	8
Landlord/Tenant	7
Insurance	5
Litigation	4
Corporate/Banking	4
Securities	4
Patent/Trademark	3
Commercial Law	2
Civil Rights	2
Consumer Law	2
Taxation	2
Guardianship	1
Juvenile	1

\* Investigations involving trust account overdraft notifications made to the OCDC are not included in this tabulation.

Dated at the Office of Chief Disciplinary Counsel at Jefferson City, Missouri this 11<sup>th</sup> day of August, 2010.

Respectfully Submitted,

ALAN D. PRATZEL  
Chief Disciplinary Counsel

## **2009 LEGAL ETHICS COUNSEL ANNUAL REPORT**

### **LEGAL ETHICS COUNSEL ROLE**

#### Informal Advisory Opinions

Pursuant to Rule 5.30(c), the Legal Ethics Counsel issues nonbinding informal advisory opinions.

The Legal Ethics Counsel office provided informal advisory opinions in response to 1362 oral contacts. Some of the contacts involved multiple, separate questions and therefore multiple opinions. Opinions given in conjunction with informal contact at bar meetings and CLE programs are generally not included in this count. Opinions provided at the “Legal Ethics Counsel Booth” at the Solo and Small Firm Conference are included.

The Legal Ethics Counsel also provided 70 written informal advisory opinions. Some of these were summarized and published with the approval of the Advisory Committee.

#### CLE Presentations

The Legal Ethics Counsel prepared and gave 28 CLE presentations for various groups, including: The Missouri Bar, University of Missouri at Kansas City Law School, Greene County Estate Planning Council, Boone County Bar, Clay County Bar, KC National Employment Lawyers Association, Multistate Tax Commission, and the National Organization of Bar Counsel.

### **COUNSEL TO ADVISORY COMMITTEE ROLE**

Rule 5.07(b) provides that the Legal Ethics Counsel shall serve as staff to the Advisory Committee.

#### Review Summaries

Pursuant to Rule 5.12, the Advisory Committee reviews investigation files if the OCDC or a Regional Disciplinary Committee finds no probable cause and the complainant requests review. The Legal Ethics Counsel office summarized and distributed 64 review files.

## Hearings

The Legal Ethics Counsel planned and coordinated a training session for the volunteer Disciplinary Hearing Officers.

The Legal Ethics Counsel office provided assistance with arrangements for hearings, as requested, to Disciplinary Hearing Officers.

The Legal Ethics Counsel began administering the hearing process to assist the Chair of the Advisory Committee. The Legal Ethics Counsel proposes a hearing panel, provides the file to the hearing panel once it has been approved by the chair, monitors the progress of the hearing, and assists the hearing officers with issues that arise during the course of the process. 43 Informations were filed in 2009.

In 2009, Rule 5.16 was amended, in part, to provide:

- (e) The written decision of the disciplinary hearing panel shall be filed with the chair of the advisory committee. The chair shall review the panel's decision for the limited purpose of determining that the recommendation for discipline, if any, conforms to this Rule 5 and the sanctions established by the Court. If the chair of the advisory committee determines that the panel's recommendation does not conform, the chair shall direct the disciplinary hearing panel to reconsider its recommendation for discipline. After reconsideration, the panel shall file the revised written decision with the chair of the advisory committee.
- (f) The chair of the advisory committee shall serve the written decision of the disciplinary hearing panel by first class United States mail, postage prepaid, on the respondent, the counsel for the informant, and the chief disciplinary counsel.

The Legal Ethics Counsel performs the majority of these duties on behalf of, and in consultation with, the Chair.

## Budget

The Legal Ethics Counsel prepared a proposed budget for the Advisory Committee and LEC for 2010.

### Meetings

The Legal Ethics Counsel office coordinated arrangements for four Advisory Committee meetings.

### Overdraft Reporting/Financial Institution Approval

The Legal Ethics Counsel worked with the Advisory Committee's Overdraft Reporting Committee to develop proposals for mandatory reporting of overdrafts on attorney trust accounts. In response to the Advisory Committee's proposal the Supreme Court adopted a rule containing mandatory overdraft reporting provisions.

Beginning January 1, 2010, Missouri attorneys were required to have their trust accounts at financial institutions "approved" by the Advisory Committee. In order to be approved, the financial institution must enter into an agreement to report insufficient funds situations that arise on attorneys' trust accounts to the Office of Chief Disciplinary Counsel.

In November 2009, the Legal Ethics Counsel obtained a list of "eligible" financial institutions from the Missouri Lawyers Trust Account Foundation. The Legal Ethics Counsel office prepared a packet of information about the new overdraft reporting provisions and mailed the packet along with an Agreement to each of the approximately 300 financial institutions. The office responded to numerous inquiries from financial institutions and notified financial institutions of approval, once the Agreement was properly executed.

### Other matters

The Legal Ethics Counsel maintained a website for the Advisory Committee and Legal Ethics Counsel. The website included a public area and a private area accessible only to Disciplinary Hearing Officers. The public area included articles and CLE materials on legal ethics issues prepared by the Legal Ethics Counsel.

The Legal Ethics Counsel served on the budget and program committees of the National Organization of Bar Counsel. In August 2009, the Legal Ethics Counsel was elected Treasurer of the NOBC.

The Legal Ethics Counsel provided research and drafting assistance to the Advisory Committee's Chronic Mental Disorders Task Force. The Task Force developed approaches for dealing with attorneys with Chronic Mental Disorders in a manner that recognizes the potential for the attorney to appropriately manage the mental disorder while protecting the public and maintaining the integrity of the legal profession.

The Legal Ethics Counsel met with the GAL Standards Sub-Committee of the Supreme Court's Family Court Committee. The Legal Ethics Counsel assisted the Sub-Committee with the identification of ethical issues that should be addressed by the proposed standards. The Legal Ethics Counsel participated in the drafting and revision of such language for the proposed standards.

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM  
ACTIVITY REPORT**

	<b>2009</b>
Total Open Cases in 2009	70
New Cases referred from OCDC	58
2008 Cases carried over	12
Meetings Scheduled/Held	38
Agreements Reached*	29
Agreements Not Reached	9
Complainant Did Not Respond or Consent	2
Complainant Failed to Attend Scheduled Meeting	1
Complainant & Respondent Did Not Respond or Consent to Meeting	2
Respondent Did Not Consent or Respond	4
Respondent Did Not Consent But Did Respond	1
Parties Resolved without Conference*	11
Pending Close	7
Cases Closed	52
 Total Resolutions*	40

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM**

<b>NATURE OF COMPLAINT</b>	<b>NO.</b>
Client Communication	16
Client Communication & Fees	9
Diligence	8
Fees	6
Client Communication & Diligence	5
Client Comm., Diligence, & Fees	4
Diligence & Fees	3
Other	2
Client Comm. & Improper Withdrawal	2
Improper Withdrawal	1
Client Comm. & Rude Behavior	1
Competence & Fees	1

<b>TYPE OF MATTER</b>	<b>NO.</b>
Domestic	18
Criminal Law	6
Litigation	6
Estate/Probate	4
Other	4
Traffic	4
Bankruptcy	3
Workers' Comp.	3
Patent/Trademark	2
Real Estate	2
Real Property	2
Securities	2
Insurance	1
Personal Injury	1

**MISSOURI BAR  
COMPLAINT RESOLUTION PROGRAM**

<b>LOCATION OF ATTY.</b>	<b>NO.</b>	<b>LOCATION OF ATTY.</b>	<b>NO.</b>
Ballwin	1	Kansas City	5
Bowling Green	1	Lebanon	1
California	1	Liberty	1
Camdenton	1	Neosho	1
Cassville	1	Nixa	1
Clayton	6	North Kansas City	1
Columbia	3	Montgomery City	1
Farmington	2	Park Hills	1
Gladstone	1	Perryville	1
Hannibal	1	Poplar Bluff	1
Hayti	1	Sedalia	3
Hillsboro	1	St. Louis	9
Holden	2	St. Joseph	3
Joplin	2	St. Robert	1
Jefferson City	2	Warrensburg	2